

**RULES
OF
DEPARTMENT OF FINANCE AND ADMINISTRATION**

**CHAPTER 0620-3-8
CONTRACT MANAGEMENT AND SUBRECIPIENT MONITORING**

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0620-3-8-.01 SCOPE. These rules are promulgated pursuant to Tennessee Code Annotated, §12-4-109(d) which directs: (1) that each state department or agency shall be responsible for the effective management of all service contracts that it procures and enters; and (2) the Commissioner of Finance and Administration to develop regulations that define service contracting fundamentals.

These rules shall not, in any way, be construed to relieve a procuring state department or agency of the responsibility for the effective management of all its service contracts.

These rules shall not be construed to address the procurement of services by the state. Department of Finance and Administration Rules, Chapter 0620-3-3, Personal Service, Professional Service, and Consultant Service Contracts, govern the procurement of services by executive branch departments and agencies of the state of Tennessee.

Authority: T.C.A. §§4-5-202 and 12-4-109. **Administrative History:** Original rule filed March 4, 2002; effective July 29, 2002.

0620-3-8-.02 APPLICABILITY.

- (1) These rules shall apply to all departments, institutions, boards, commissions, and agencies of the state of Tennessee executive branch.
- (2) The legislative and judicial branches of state government and the University of Tennessee and State Board of Regents college and university systems shall have the option of:
 - (a) following these rules, the policy and procedures specified herein; or
 - (b) developing their own service contracting procedures, provided that such are in compliance with the policy expressed in these rules.
- (3) These rules shall not apply to:
 - (a) contracts of the Department of Transportation for construction and engineering, which are made in accordance with the provisions of Tennessee Code Annotated, §54-5-101, et seq.
 - (b) contracts of the State Building Commission made in accordance with the provisions of Tennessee Code Annotated, §4-15-102.
 - (c) contracts for procurement of services in connection with the issue, sale, purchase, and delivery of bonds, notes and other debt obligations or the administration, safekeeping, and payment after delivery of such debt obligations by the state or any of its agencies.
 - (d) contracts to hire additional counsel for the state of Tennessee or any of its departments, institutions or agencies made in accordance with the provisions of Tennessee Code Annotated, §8-6-106.

(Rule 0620-3-8-.02, continued)

- (e) instances where the state procures the services of an expert witness for any judicial or administrative proceeding.
- (4) Any part of these rules which may conflict with applicable federal regulations or provisions governing the use of federal grant funds may be waived by the Commissioner of Finance and Administration.
- (5) Any part of these rules which may conflict with applicable law shall be null and void.

Authority: T.C.A. §§4-5-202 and 12-4-109. **Administrative History:** Original rule filed March 4, 2002; effective July 29, 2002.

0620-3-8-.03 CONTRACT MANAGEMENT AND SUBRECIPIENT MONITORING-DISTINGUISHED.

- (1) A service contract creates either a vendor relationship or a subrecipient relationship with the contractor. The nature of the business relationship with the contractor (i.e., vendor or subrecipient), and not the type of contract (i.e., fee-for-service contract or a grant), controls whether a contractor is a vendor or a subrecipient. Direction for determining whether a contractual relationship is a vendor or subrecipient relationship is found in both Department of Finance and Administration Policy 22 and the federal Office of Management and Budget Circular A-133.
- (2) A procuring state agency is responsible for contract management of all vendor and subrecipient contracts under its purview. Additionally, contracts characterized by a subrecipient relationship are subject to subrecipient monitoring.

Authority: T.C.A. §§4-5-202 and 12-4-109. **Administrative History:** Original rule filed March 4, 2002; effective July 29, 2002.

0620-3-8-.04 CONTRACT MANAGEMENT.

- (1) Each state department or agency shall be responsible for the effective management of all contracts under its purview. Contract Management is a state department or agency's on-going continuum of processes for administering and reviewing the performance of each service contract for efficiency, cost-effectiveness, and service provider accountability and results. Contract Management may include, but is not limited to:
 - (a) allocating adequate staff and resources to contract management;
 - (b) reviewing contractor performance in terms of progress and compliance with contract provisions;
 - (c) communicating with contractors to ensure maximum performance and intended results;
 - (d) approving and remitting payments in accordance with contract provisions and applicable law for acceptable work;
 - (e) maintaining records of each contract that document activities such as procurement, management, and subrecipient monitoring, if applicable; and
 - (f) evaluating contract results in terms of the achievement of organizational objectives.
- (2) Annual Contract Management Plan. Each state agency shall establish an Annual Contract Management Plan addressing the general management of service contracts for which it is responsible.
 - (a) Content. A contract management plan should include:

(Rule 0620-3-8-.04, continued)

1. information about the specific staff positions and resources that will be assigned to contract management;
 2. a description of the organization of identified staff and resources for the contract management responsibility; and
 3. an explanation of how the contract management staff will review and supervise contractor performance, progress, and contract compliance.
- (b) Approval. Before each calendar year for which the plan is applicable, the commissioner or chief executive of the subject state agency must approve the Annual Contract Management Plan and, before submitting any service contract for approval in that year, submit a copy to the Department of Finance and Administration, Office of Contracts Review.
- (3) Responsible Staff. Each state agency should identify the specific staff responsible for the management of each service contract under its purview and ensure that such staff have adequate training. Such training may include:
 - (a) definition of service needs;
 - (b) service procurement law, rules, and regulations;
 - (c) basic record keeping;
 - (d) program specific goals, objectives, purpose, and responsibilities;
 - (e) interpersonal communication;
 - (f) project management skills and tools; and
 - (g) evaluation techniques, skills, and tools.
- (4) Contract Management Processes. Each state agency shall implement such management practices as necessary to ensure:
 - (a) accountability, results, and positive programmatic impact from service contracts (as opposed to mere contract compliance).
 - (b) the use of diverse talents of the agency's "centralized" units (e.g., contract administration, audit, fiscal), where possible, as "support" staff to assist or oversee program staff in contract management responsibilities.
- (5) Contract Management Evaluation. The efficacy of each state agency's contract management shall be subject to on-going evaluation and improvement, and the responsibility for which shall belong to:
 - (a) the procuring state agency's program area(s) having responsibility for each service contracted;
 - (b) the procuring state agency's functional area(s) having responsibility for internal controls, financial integrity, and internal audit;
 - (c) the procuring state agency's executives; and
 - (d) the Comptroller of the Treasury (pursuant to his power to review and audit State government entities under Title 8, Chapter 4 and Title 9, Chapter 18 of Tennessee Code Annotated).

(Rule 0620-3-8-.04, continued)

Authority: T.C.A. §§4-5-202 and 12-4-109. **Administrative History:** Original rule filed March 4, 2002; effective July 29, 2002.

0620-3-8-.05 SUBRECIPIENT MONITORING.

- (1) Subrecipient Monitoring is required, in addition to contract management, for the specific subset of service contracts and grants that are characterized by a subrecipient relationship. Subrecipient contract monitoring is an additional, independent review that is used to determine a subrecipient contractor's compliance with the requirements of applicable state and/or federal programs, laws and regulations, and stated results as well as the review of internal controls to determine if the financial management and the accounting system are adequate to account for program funds in accordance with state and/or federal requirements. Policies governing state government subrecipient contract monitoring are found in Department of Finance and Administration Policy 22, signed by the Commissioner of Finance and Administration and the Comptroller of the Treasury.
- (2) Independence Required. Staff with subrecipient monitoring responsibilities must have a separation of duties from program staff to ensure independence and objectivity.
- (3) Plan Required. Each state agency subject to these rules shall develop and obtain Department of Finance and Administration approval of an annual subrecipient monitoring plan that identifies all of its subrecipients and all subrecipients to be monitored and describes the risk criteria used to prioritize subrecipients for monitoring purposes (a risk-based approach for the selection of subrecipients to be monitored, unless specifically prohibited by state and/or federal program guidelines). The deadline for this plan is detailed in Department of Finance and Administration Policy 22.
- (4) Annual Report Required. Each state agency subject to these rules shall submit an annual report of its prior year, subrecipient-monitoring activities to the Department of Finance and Administration. The deadline for this report is detailed in Department of Finance and Administration Policy 22.
- (5) Department of Finance and Administration Oversight and Support. There shall be created an office of Program Accountability Review which shall serve as the main point of contact and authority, subject to the approval of the Commissioner of Finance and Administration, regarding all matters related to subrecipient monitoring, whether conducted independently or by procuring agency staff. This office shall execute the rules of this chapter regarding subrecipient monitoring.

Authority: T.C.A. §§4-5-202 and 12-4-109. **Administrative History:** Original rule filed March 4, 2002; effective July 29, 2002.

0620-3-8-.06 EXCEPTIONS TO RULES. The Commissioner of Finance and Administration shall have the authority to make exceptions to the rules of this chapter. The Department of Finance and Administration shall file approved exceptions to these rules and the reasons therefore with the Comptroller of the Treasury.

Authority: T.C.A. §§4-5-202 and 12-4-109. **Administrative History:** Original rule filed March 4, 2002; effective July 29, 2002.